

NOT INCLUDED IN
BOUND VOLUMES

PMMc
Long Island City, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GLOBAL CONTACT SERVICES, INC.
Employer

and

Case 29-RC-134071

LOCAL 621, UNITED CONSTRUCTION
TRADES & INDUSTRIAL EMPLOYEES
Petitioner

and

TRANSPORT WORKERS UNION,
LOCAL 100, AFL-CIO
Intervenor

and

LOCAL 322, UNITED WORKERS OF AMERICA
Intervenor

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held September 10-13, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 331 for Intervenor Transport Workers Union, Local 100, AFL-CIO, 19 for the Petitioner, 8 for Intervenor Local 322, United Workers of America, and 91 against representation, with 1 void ballot and no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations,¹ and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

The Employer also contends that the Board should draw an "adverse inference" against Transport Workers Union, Local 100, based on its failure to call Business Agent Frank McCann as a witness. The Employer urges us to find that McCann would have corroborated employee Eric Shuler's testimony that, prior to the election, McCann said to employee Sandra Lennon: "let them eat now, we'll feed them now, we'll eat later." The Board has long held that "the failure of a witness to appear on behalf of a party for whom he/she would be expected to give favorable testimony may appropriately give rise to an inference that the witness's testimony would be unfavorable." *Carpenters Local 405*, 328 NLRB 788, 788 fn. 2 (1999). McCann, as an agent of Local 100, may reasonably be presumed to be favorably disposed to it, and we assume that, if called, he would have admitted making the above-quoted statement. However, as the hearing officer correctly concluded in her report, that statement by McCann, in the context of Local 100's election campaign, which included providing food to employees and literally feeding them, does not support the Employer's objections that Local 100 provided cash payments to employees in exchange for their votes or campaign efforts.

Further, we find no merit to the Employer's suggestion that we should draw an adverse inference against Local 100 based on the failure of employee Patricia Edwards to appear or testify. Normally, the adverse inference rule is not triggered by a party's failure to call an employee as a witness because there is no reasonable expectation that an employee favors one party over the other, absent some showing to the contrary. See *Daikichi Sushi*, 335 NLRB 622, 622 fn. 4 (2001), *enfd. mem.* 56 Fed.Appx. 516 (D.C. Cir. 2003); *Torbitt & Castleman, Inc.*, 320 NLRB 907, 910 fn. 6 (1996), *enfd. in relevant part* 123 F.3d 899, 907 (6th Cir. 1997). Here, no credited evidence indicates that Edwards was sympathetic towards Local 100 or that she was in any way under its control. Accordingly, an adverse inference may not properly be drawn against Local 100 from Edwards' failure to testify.

At one point in her report, the hearing officer inadvertently found that a majority of the valid votes were cast for the Petitioner. In fact, as she stated elsewhere, a majority of the valid votes were cast for Intervenor Local 100. We have corrected this error in the Certification of Representative.

IT IS CERTIFIED that a majority of the valid ballots have been cast for Transport Workers Union, Local 100, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All customer service representatives and travel service agents, but excluding all managerial employees, workforce managers, team leaders, quality control/assurance associates, administrative employees, administrative assistants, reporting administrators, confidential employees, clerical employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C. April 28, 2015.

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD